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Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Hendrix et al.
Application No. 10/083050
Filed: February 26, 2002
Attorney Docket No. 8439M 1

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed June 10, 2002 (certificate of mailing date May 28, 2002), under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on February 26, 2002, without an executed oath or declaration. Accordingly, on March 29, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of May 29, 2002.

In reply, applicant filed a Statement of Facts, the surcharge for late filing of the declaration, a copy of correspondence mailed to Marc Richard's legal representative and a partially executed declaration. A petition fee of \$130.00 has been charged to deposit account 16-2480.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirement (1).

As to item (1), Rule 47 applicant has failed to show that legal representative of non-signing inventor refused to sign the declaration after having been presented with the application papers. Rule 47 applicant indicates, Marc Richard's legal representative, Susie Richards, refused to sign the declaration in a telephone conversation. However, rule 47 applicant did not indicate a copy of the application papers (specification, including claims, drawings, and oath or declaration) was presented to the legal representative of non-signing inventor. All that is indicated is that the Declaration with Power of Attorney, Global General Assignment and the Republic of China Oath & Assignment were presented. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the legal representative of non-signing inventor. See MPEP 409.03(d).

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor's legal representative.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.



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